

BEFORE THE
ILLINOIS COMMERCE COMMISSION

IN THE MATTER OF :

ILLINOIS BELL TELEPHONE
COMPANY, INC.

V

) No. 08-0105
) Status

GLOBAL NAPs ILLINOIS, INC.

Complaint pursuant to Section)
252(e) of the Federal)
Telecommunications Act of 1996,)
47 U.S.C. Sections 252(e), and)
Sections 4-101, 10-101, and)
10-108 of the Illinois Public)
Utilities Act, 220 ILCS 5/4-101)
220 ILCS 5/10-101, and 220 ILCS)
5/10-108.)

Chicago, Illinois

February 27, 2008

Met pursuant to notice at 10:00 a.m.

BEFORE :

MS. EVE MORAN, Administrative Law Judge.

APPEARANCES :

MAYER BROWN, LLP, by
MR. CHRISTIAN BINNIG and
MS. DIANA ANDSAGER
71 South Wacker Drive
Chicago, Illinois 60606

appeared for the Illinois
Bell Telephone Company, Inc.;

1 APPEARANCES: (Cont'd.)

2 GLOOR LAW GROUP, by
3 MR. PHILIP J. FOWLER and
4 MR. DANIEL P. JACKSON
225 West Wacker Drive
Chicago, Illinois 60606
appeared for Global NAPs, Inc.;

6 MR. JAMES SCHELTEMA
4475 Woodbine Road
7 Pace, Florida 32571
appeared for Global NAPS, Inc.;

9 MR. MICHAEL L. HARVEY
160 North LaSalle Street
10 Chicago, Illinois 60601
appeared for Commission Staff.

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20 SULLIVAN REPORTING COMPANY, by
Teresann B. Giorgi, CSR

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1		<u>I</u> <u>N</u> <u>D</u> <u>E</u> <u>X</u>	
2			Re- By
3	<u>Witnesses:</u>	<u>Dir.</u> <u>Crx.</u> <u>dir.</u> <u>crx.</u>	<u>Examiner</u>
4	NONE		
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10		<u>E</u> <u>X</u> <u>H</u> <u>I</u> <u>B</u> <u>I</u> <u>T</u> <u>S</u>	
11	<u>Number</u>	<u>For Identification</u>	<u>In Evidence</u>
12	NONE		
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1 JUDGE MORAN: Pursuant to the direction of
2 the Illinois Commerce Commission, I call
3 Docket 08-0105. This is Illinois Bell Telephone
4 Company, Inc., versus Global NAP, all caps, small s,
5 Illinois, Inc.

6 May I have the appearances for the
7 record, please.

8 MR. FOWLER: Yes.

9 On behalf of Global NAPs Illinois,
10 Inc., it's Phil Fowler and Dan Jackson from the
11 Gloor Law Group, and Jim Scheltema from Global NAPs
12 itself.

13 JUDGE MORAN: Okay. Thank you.

14 And you're address and telephone
15 number?

16 MR. FOWLER: Yes. The Gloor Law Group is at
17 225 West Wacker Drive, Suite 1700, Chicago, Illinois
18 60606. Our telephone number is 312-752-3700.

19 Judge, this morning we'd ask leave to
20 file our appearances. We'd also ask leave to file
21 two motions for pro hac admissions, one for
22 Mr. Scheltema and one for Eric Osterberg from the

1 Dreier Law Group. Both states have reciprocity. We
2 have written motions, we ask leave to file today, as
3 well.

4 I don't think Illinois Bell has any
5 objection.

6 JUDGE MORAN: Okay. And as I understand it for
7 those pro hac vice, the main standard set out in the
8 law for this Commission is that there be reciprocity
9 from the other jurisdiction.

10 So on that basis and hearing no
11 objection from any parties, or Staff, that will be
12 allowed. You certainly don't need to ask me for
13 leave to file an appearance. You will be doing
14 that, however, in accordance with the Clerk's Office
15 requirements and service to the parties.

16 MR. FOWLER: The only reason we asked this,
17 we've requested this is --

18 JUDGE MORAN: I understand. You just want to be
19 able to speak today --

20 MR. FOWLER: Right.

21 JUDGE MORAN: -- and given the fact your
22 appearances were not entered, you were a little

1 worried.

2 MR. FOWLER: Correct.

3 MR. BINNIG: Your Honor, good morning.

4 JUDGE MORAN: Yes.

5 MR. BINNIG: Christian F. Binnig from Mayer
6 Brown, LLP, 71 South Wacker Drive, Chicago, Illinois
7 60606, appearing on behalf of Illinois Bell
8 Telephone Company.

9 JUDGE MORAN: Thank you. And?

10 MS. ANDSAGER: I'm Diana Andsager,
11 A-n-d-s-a-g-e-r, also of Mayer Brown.

12 JUDGE MORAN: And same address and same
13 telephone number, I assume.

14 MS. ANDSAGER: Yes.

15 JUDGE MORAN: Thank you.

16 MR. HARVEY: Appearing for the Staff of the
17 Illinois Commerce Commission, Matthew L. Harvey, 160
18 North LaSalle Street, Suite C-800, Chicago, Illinois
19 60601-3104.

20 JUDGE MORAN: Thank you.

21 With that, let the record reflect that
22 there are no other appearances.

1 We have this complaint. Have the
2 parties at all, or anybody in this room talked about
3 how they want to proceed with this case?

4 MR. BINNIG: Well, your Honor, we did come here
5 with a schedule. We've given Mr. Harvey and Counsel
6 for Global NAPs a copy of the schedule this morning.

7 The schedule assumes that we would
8 request today, pursuant to 83 Illinois
9 Administrative Code 200.180(a) of the Commission's
10 Rules of Practice, that you issue a ruling requiring
11 Global NAPs Illinois, Inc., to answer. And I
12 believe under the rules they would have 21 days to
13 do that.

14 JUDGE MORAN: I always think that answers are a
15 good idea.

16 MR. BINNIG: We would propose a schedule that
17 would have AT&T --

18 JUDGE MORAN: Do you have a copy of the schedule
19 for the --

20 MR. BINNIG: I do.

21 JUDGE MORAN: I like to follow along with the
22 big guys.

1 MR. BINNIG: (Indicating.)

2 JUDGE MORAN: Thank you.

3 MR. BINNIG: It's the bottom schedule, your

4 Honor.

5 JUDGE MORAN: Okay. The alternative schedule?

6 MR. BINNIG: Yes.

7 And AT&T would file its direct

8 testimony April 18th.

9 GNAPs and Staff would file their

10 response testimony May 16th.

11 Before that -- you know, I don't

12 expect we'll have discovery disputes. If either

13 Staff or Global NAPs believes that they need any

14 discovery beyond that, that's already been served in

15 a federal court case, for example, and been

16 responded to there, that could be done starting

17 today.

18 Our reply testimony would be served

19 June 6th.

20 Hearing two days at the end of June,

21 subject to your availability, then, your Honor.

22 Initial briefs July 16th.

1 Reply briefs August 8th.

2 Again, subject to your Honor's

3 schedule, your proposed order September 5th.

4 Exceptions September 19th.

5 And replies on exceptions

6 September 29th.

7 JUDGE MORAN: Okay.

8 Anybody have any thoughts about this

9 schedule?

10 MR. FOWLER: We just got this morning.

11 Mr. Scheltema has had some discussion.

12 JUDGE MORAN: Would you guys like to talk about

13 it outside of my presence?

14 MR. SCHELTEMA: Well, we've been going over it

15 just a little bit.

16 JUDGE MORAN: Okay.

17 MR. SCHELTEMA: Both, we did try -- both parties

18 tried to communicate but, apparently, there was --

19 this was with Mr. Osterberg, there was some sort of

20 conflict. Each party has tried to do its part to

21 avoid this situation.

22 That being said, my understanding was

1 that the traditional case at the ICC takes about
2 11 months.

3 JUDGE MORAN: Well, it all depends on what kind
4 of case.

5 MR. SCHELTEMA: Right.

6 JUDGE MORAN: A rate case takes 11 months. It
7 has to be done by 11 months.

8 A complaint case takes a year. But
9 I'm not sure what nature this is exactly.

10 And, Mr. Harvey, do you --

11 MR. HARVEY: I think that's correct. It's my
12 understanding that this is a complaint brought under
13 Section 10.108 and the Commission would be required
14 to act by, whatever, February 14th, 2009, I guess.
15 This clearly does that.

16 MR. SCHELTEMA: With that said, we have come
17 from federal court. There has been some discovery,
18 a great deal of discovery, already levied between
19 the parties. There's been some depositions and so
20 forth. But we've changed counsel. Counsel has no
21 idea what the volume of discovery is and -- I mean,
22 they're jumping into it sort of midstream.

1 And to be quite honest with you, I
2 know some, but not anywhere near what I should for
3 this particular case. And the case is such that, it
4 threatens our ability to even continue in business.

5 So it's not just a fine kind of a
6 case. They've actually asked to withdraw are CPCN
7 and eliminate us as a competitor, period.

8 So to the extent that I can have a
9 realistic schedule to, at least, examine, get a hand
10 around the discovery, find out what gaps I have to
11 fill in, it would be welcomed.

12 JUDGE MORAN: Then, what are your needs? What
13 do you need?

14 MR. SCHELTEMA: Well, let's see. I'd probably
15 need somewhere between 45 and 60 days for these guys
16 to go through the volume of papers we have. It's
17 rather incredible.

18 JUDGE MORAN: Okay.

19 MR. SCHELTEMA: And then we'd probably need --
20 Mr. Vineck (phonetic) has volunteered that to the
21 extent that there's any discovery, that I'd want to
22 still let him have a turnaround time of 14 days, two

1 weeks.

2 JUDGE MORAN: Okay. So how can we work your
3 needs into this schedule?

4 Today is what, the 27th?

5 MR. SCHELTEMA: I'm thinking that what I'd need
6 is probably 45 or 60 days prior to when --

7 JUDGE MORAN: Now, remember, AT&T can -- since
8 they're going first, they can file their direct
9 testimony, you can still be looking for your --
10 through your stuff for the stuff that you need.

11 MR. SCHELTEMA: Yes.

12 JUDGE MORAN: And you --

13 MR. SCHELTEMA: There's also -- when you look at
14 it, it says that this is essentially the only case
15 going on and the only jurisdiction, and you'll be
16 ready for a hearing in June. And, frankly, we have
17 a lot of cases between big brother here, and we're
18 just out gunned. And I can't maintain, much less
19 tread water or do a good job, if I have to juggle by
20 late June.

21 JUDGE MORAN: I understand.

22 So you really want to push the whole

1 thing back.

2 MR. BINNIG: Well, your Honor, how about this
3 for a suggestion.

4 JUDGE MORAN: Sure.

5 MR. BINNIG: The May 16th date is for their
6 testimony, that already gives them 80 days from
7 today. We'd be willing to push back everything on
8 the schedule by about two weeks. But beyond that,
9 we don't think is a reasonable time period.

10 Notwithstanding Mr. Scheltema's protestation, Global
11 NAPs has many lawyers at their disposal. They've
12 been involved in proceedings involving these issues
13 for many, many years. And this is a story that we
14 hear repeatedly to delay reaching the merits. We
15 are very interested in reaching the merits as soon
16 as possible.

17 MR. SCHELTEMA: Can I suggest something?

18 Mr. Harvey said that the deadline is
19 February. The suggested schedule here is the end of
20 September. Cut the difference and we've got to the
21 end of November.

22 JUDGE MORAN: Well, I think if we'd be pushing

1 most of these dates back two weeks, we'd probably be
2 at the end of November, wouldn't we?

3 MR. BINNIG: By the time we get to the
4 Commission for them to consider, yes.

5 MR. HARVEY: Yeah, I mean, if we have a --

6 JUDGE MORAN: I mean, how many events do you
7 have here? 1, 2, 3, 4, 5, 6, 7, 8, 9, 9 times 2 is
8 18. So that's 18 weeks, right?

9 MR. HARVEY: Well, no, not really, because -- I
10 think what -- you're sort of adding two weeks
11 generally. We're not adding two weeks to each
12 event.

13 MR. BINNIG: Right. It would be an extension of
14 two weeks total on the schedule, which would have --

15 MR. HARVEY: The second week of October.

16 MR. BINNIG: It would be the middle of October
17 for replies on exceptions. So by the time that
18 something was presented for the Commission to
19 consider at hearing, we're probably in the beginning
20 of November.

21 MR. HARVEY: Depending on how the
22 post-exceptions' order would work out.

1 MR. BINNIG: Right.

2 MR. HARVEY: But certainly if our exceptions
3 were in the middle of October, you know, you'd
4 almost have to get the proposed order done that day
5 to even get it into the first meeting in November,
6 because of the lockdowns.

7 JUDGE MORAN: Right.

8 MR. FOWLER: The difficulty for us, and I speak
9 for Eric Osterberg, is to try to get out response
10 testimony, figure out discovery and get that done by
11 May, it would be near impossible given the
12 voluminous materials that we've got to go through.

13 JUDGE MORAN: So how about we put the hearing at
14 the end of July?

15 MR. SCHELTEMA: That's better than the end of
16 June, your Honor.

17 JUDGE MORAN: All right.

18 MR. HARVEY: Okay. So we're looking at the end
19 of July?

20 JUDGE MORAN: The 28th, 29th of July.

21 MR. HARVEY: The 28th is a Monday and the 29th a
22 Tuesday.

1 JUDGE MORAN: Is that good for everybody, the
2 28th and 29th?

3 MR. SCHELTEMA: Yes.

4 JUDGE MORAN: 28th, 29th, and we'll leave the
5 30th as a backup for additional data, if we need it.
6 Okay?

7 Now, that leaves -- I'll make that the
8 starting point. And then I'm going to ask that all
9 of you discuss how you want to do the dates now
10 going backward from that date.

11 MR. SCHELTEMA: That's fine.

12 JUDGE MORAN: And going forward for the date,
13 for the different functions.

14 MR. BINNIG: Here's what I propose, off the top
15 of my head.

16 They're essentially moving the hearing
17 back slightly more than a month?

18 JUDGE MORAN: Right.

19 MR. BINNIG: So I would suggest moving back the
20 dates for testimony by a month.

21 So AT&T's testimony would be May 18th.

22 JUDGE MORAN: Okay.

1 MR. BINNIG: GNAPs and Staff testimony would be,
2 assuming it falls on a weekday, June 16th.

3 MR. HARVEY: June 16th does fall on a weekday.
4 However, May 18th does not. It's a Sunday.

5 MR. BINNIG: Make it May 19th for AT&T direct --
6 Illinois Bell.

7 JUDGE MORAN: Okay. May 19th.

8 MR. BINNIG: Then Illinois Bell reply testimony
9 would be --

10 MR. HARVEY: July 6th, perhaps, which is also a
11 Sunday.

12 MR. BINNIG: July 7th?

13 MR. SCHELTEMA: Yeah, make it the 7th, it's the
14 4th of July holiday. How about if we make it on the
15 8th, actually?

16 MR. BINNIG: That's fine with -- that means my
17 client won't hate me.

18 MR. SCHELTEMA: Is that better for you, Matt?

19 MR. HARVEY: That's fine.

20 MR. BINNIG: July 8th for our reply. And
21 hearings, 28th, 29th and 30th as a backup.

22 I guess initial briefs, we're looking

1 at three weeks for initial briefs, August 22nd?

2 MR. HARVEY: 22nd, that's a Friday.

3 MR. BINNIG: Say, two weeks for replies. So

4 replies, September 5th?

5 MR. HARVEY: September 5th.

6 JUDGE MORAN: When's Labor Day, Matt?

7 MR. HARVEY: September 1st.

8 MR. SCHELTEMA: Can we flip that reply out to

9 the 10th, because reply briefs are usually very

10 difficult.

11 JUDGE MORAN: Okay.

12 MR. BINNIG: September 10th?

13 MR. HARVEY: It's a Wednesday.

14 MR. BINNIG: How about the 8th?

15 MR. SCHELTEMA: All that does is mean that I

16 work on Saturday and Sunday, instead of giving it to

17 you on that Friday.

18 MR. BINNIG: Right.

19 MR. SCHELTEMA: Yeah, I know, but come on, I

20 gave you a couple days here so you wouldn't mess up

21 the July 4th weekend.

22 JUDGE MORAN: All right. We'll split the

1 difference, and it will be September 9th.

2 MR. HARVEY: Okay. The proposed order would be
3 October 8th or 9th, and keeping in mind that the 9th
4 is Yom Kippur, for anybody that is observant.

5 JUDGE MORAN: Okay. We'll put it at October
6 8th.

7 MR. BINNIG: I would say two weeks for
8 exceptions and a week or ten days for reply.

9 MR. HARVEY: October 8th -- that would be
10 October 22 for exceptions.

11 MR. SCHELTEMA: Ten days for reply would be --

12 MR. BINNIG: November 2nd.

13 MR. HARVEY: Monday is the 3rd.

14 JUDGE MORAN: And then hopefully I'll get the PO
15 out before Thanksgiving.

16 Matt, when is Thanksgiving this year?
17 What date?

18 MR. HARVEY: Thanksgiving is the -- I think it's
19 the 27th. It's very late this year. Yeah, it's the
20 27th.

21 The one thing I notice we don't have
22 here is a date for GNAPS to answer otherwise plead,

1 is that contemplated by the parties?

2 MR. BINNIG: Well, I think, your Honor should
3 rule today that they should file an answer, then
4 they've got 21 days to answer.

5 JUDGE MORAN: You will be filing an answer. I
6 think I indicated that earlier.

7 MR. SCHELTEMA: 21 days from today, which is --

8 MR. HARVEY: 21 days from today is 19 March.

9 MR. SCHELTEMA: March 19th?

10 MR. HARVEY: Yes, that's correct.

11 JUDGE MORAN: So we have -- let me review this
12 with you.

13 We have AT&T's direct testimony,
14 May 19th.

15 MR. SCHELTEMA: Correct.

16 JUDGE MORAN: Global's and Staff's response
17 testimony June what? I don't have a date --

18 MR. HARVEY: June 16th.

19 JUDGE MORAN: Thank you.

20 MR. HARVEY: Replies on July 8 -- reply
21 testimony of AT&T, July 8th.

22 JUDGE MORAN: Hearings, July 28th and 29th, also

1 reserving 30th as a potential backup date, just in
2 case one of those other dates falls apart.

3 We will then have initial briefs by
4 the parties and Staff on August 22nd.

5 Reply briefs on September 9th.

6 It is expected that the proposed order
7 will be out October 8th.

8 Exceptions will then be due
9 October 22nd.

10 And replies to exceptions on
11 November 2nd.

12 MR. BINNIG: November 3rd.

13 JUDGE MORAN: I'm sorry.

14 MR. BINNIG: The 2nd, I believe, is a Sunday.

15 JUDGE MORAN: I'm glad we went through this.

16 November 3rd.

17 Okay. And believe me, I'll try to
18 keep that schedule because I do want to get this out
19 before Thanksgiving.

20 Okay. Is there anything else we need
21 to discuss this morning, at all?

22 MR. FOWLER: Do you need a draft order for those

1 pro hac admissions?

2 JUDGE MORAN: The what?

3 MR. FOWLER: The admissions of the attorneys

4 pro hac vice, do you need a draft order from them?

5 JUDGE MORAN: No, I don't, because all I'd be

6 doing is -- I've already made my rulings for that on

7 the record.

8 MR. HARVEY: You would certainly be the first

9 person ever to have done so.

10 MR. FOWLER: Well, it's my first time here. So

11 I just want to make sure --

12 JUDGE MORAN: But this should give you all ideas

13 about these draft orders.

14 Okay, with that, we're going to

15 continue this case to July 28th, 2008. And what

16 time, gentlemen?

17 MR. HARVEY: 9:30 or 10:00 is fine with Staff,

18 your Honor. It's up to the parties, really.

19 MR. BINNIG: That's fine with Illinois Bell.

20 JUDGE MORAN: 9:30 or 10:00? I have to put a

21 time in.

22 MR. SCHELTEMA: 10:00. That way maybe we can

1 gab with each other before --

2 MR. BINNIG: 10:00 is fine, your Honor.

3 MR. HARVEY: 10:00 is fine.

4 JUDGE MORAN: Very good.

5 Thank you so much.

6 MR. HARVEY: Thank you, your Honor.

7 (Whereupon, the hearing in

8 the above-entitled matter

9 was continued to July 28,

10 2008.)

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